

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-194398.1

DATE: July 23, 1979

MATTER OF: Industrial Technological
Associates, Inc.

DIGEST:

1. [Protest alleging improprieties in solicitation] filed subsequent to closing date for receipt of offers is untimely under Bid Protest Procedures. Moreover, issues raised do not justify making exception to timeliness rules which permit consideration of untimely protests where issues are "significant" to procurement practices.
2. Where record indicates proposal evaluation was in accordance with established criteria and was based on reasoned judgment of evaluators, protest based on offeror's disagreement with evaluators is denied because determination of relative merits of proposal is responsibility of procuring agency and will not be disturbed unless shown to be arbitrary or contrary to statutes and regulations.

Industrial Technological Associates, Inc. (Industrial) protests the award of a contract to any firm other than it under request for proposals (RFP) SBA-7(i)MA-79-1 to provide management and technical assistance services for area 32 - Region V and area 26 - City of Cleveland. The solicitation for area 32 - Region V was subsequently canceled and Industrial has withdrawn its protest for that solicitation.

The solicitation, issued November 13, 1978, provided that each proposal would be evaluated on a point system pursuant to certain factors set forth in the solicitation. Closing date was December 15, 1978.

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DLV-02235
Untimely bid-protests
Proposal evaluation
Request for proposals
Solicitation specificity
Bidders eligibility
Accountants

In its protest received in GAO on March 30, 1979, Industrial referred to the RFP's program specifications, which projected that 90 percent of the bookkeeping and accounting services called for would be appropriate for a junior accountant, and that there would be few instances requiring the abilities of senior, or CPA, accounting expertise. Industrial states it has had the opposite experience and suggests that it disregarded the RFP's advice in pricing its offer, which contemplated the use of "mature CPAs, public accountants, and business executives plus * * * other senior consultants * * *." Therefore, Industrial argues, this portion of the RFP was not in the best interests of the Government. Industrial also contends that the RFP was defective in that it required offerors to include uncertain travel and per diem costs within their fixed price per task day.

Our Bid Protest Procedures, 4 C.F.R. part 20 (1978), provide in section 20.2(b)(1):

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

Therefore, if Industrial thought the RFP erroneously contemplated the use of junior accountants or improperly required offerors to factor highly speculative costs into their fixed price proposals, it was required to file its protest prior to the closing date for receipt of initial proposals, December 15, 1978. Industrial's protest was not received in GAO until March 30, 1979. Thus the protest must be considered untimely and not for consideration on the merits. The Art Production Company, B-191470, April 5, 1978, 78-1 CPD 273; Deere & Company, B-189136(1), June 28, 1977, 77-1 CPD 460.

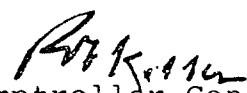
Industrial contends that our Office could consider the protest even if untimely, under the "significant issue exception" provided in 4 C.F.R. § 20.2(c) (1978).

This section permits consideration of untimely protests where issues significant to procurement practices or procedures are raised. However, the significant issue exception is limited to issues which are of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. ABC Cleaning Service, Inc., B-190406, February 27, 1978, 78-1 CPD 158. We see nothing in this case to warrant invoking this exception.

Industrial further contends that SBA's evaluators erred in their evaluation of Industrial's capability. Industrial doesn't specify how such errors were made. It merely asserts that it was perfectly capable of performing and should have received a contract.

In resolving cases in which a protester, as here, challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been selected for award. The determination of the relative merits of proposals is the responsibility of the procuring agency, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Accordingly, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and such discretion must not be disturbed unless shown to be arbitrary or in violation of the procurement statutes and regulations. Airport Management Systems, Inc., B-190296, May 25, 1978, 78-1 CPD 395. We will not substitute our judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180. A review of the record indicates that the evaluation was conducted in accordance with the stated criteria in the solicitation, and that Industrial was scored lower than other offerors and proposed other than the low price.

Accordingly, the protest is dismissed in part and denied in part.


Deputy Comptroller General
of the United States